(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: JUL 2 6 2013

Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. According to Part 6 of the Form I-140, the petitioner seeks employment as an "Elementary Special Education Teacher" for . At the time of filing, the petitioner was teaching at School in Maryland where she has worked since October 2005. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner has established that her work as a special educator is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the petitioner's work would be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. Assertions regarding the overall importance of an alien's area of expertise cannot suffice to establish eligibility for a national interest waiver. *Id.* at 220. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

The petitioner filed the Form I-140 petition on June 29, 2012. In Part 4 of the Form I-140, the petitioner answered "yes" to whether any petitions had previously been filed on her behalf. The record reflects that filed a Form I-140 petition, with an approved labor certification, on her behalf on November 25, 2008, to classify her as a professional under section 203(b)(3) of the Act. The Texas Service Center approved the petition on February 7, 2009, with a priority date of May 31, 2008.

In a June 27, 2012 letter accompanying the petition, counsel stated that the petitioner merits the national interest waiver due to her equivalent master's degree in special education, almost twelve years of post-baccalaureate progressive work experience, receipt of a Maryland's Initiative for New Teachers (MINT) Small Grants Award (2006), receipt of a Certificate of Recognition from the Pilipino Educators Network (PEN) for "outstanding service and dedication as a member of the PEN CORE TEAM" (2010), impact on her special education students, and improvement of United States education. Academic degrees, experience, and recognition such as awards are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (F), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. *See* section 203(b)(2)(A) of the Act. The petitioner's awards and her impact on her students and on improving United States education will be further discussed later in this decision.

The petition included a 5-page "Personal Statement" signed by the petitioner, discussing her background and career. The petitioner stated:

> In September 2005, I was hired and sponsored by the System as a Special Education teacher at School in Maryland – a regionally accredited special education center categorized as having the "most restrictive environment" in special education. I'm working as a special education teacher which is a hard-to-staff position in a self-contained classroom with typically 6 children with severe and multiple disabilities. These include autism, emotional disturbance, learning disabilities, intellectual disabilities, speech and language impairments, orthopaedic, and other health impairments.
>
> * * *
>
> With all the years of productive experience and service, accomplishments, and growing passion to educate, I would like to express my sincerest desire in becoming a permanent resident of the United States of America, to become a law-abiding citizen with a mission to

> continue practicing my profession and helping the children with special needs in the Unite [sic] States of America, not only receive quality education but to give them a chance for a better life as a part of the society. I have a firm conviction to continuously maintain a high level of professional competence and integrity to benefit the children with special needs and their families. Using evidence and research-based instruction, I will develop the highest possible learning outcomes and quality life potential in ways that respect their dignity, culture, language and background. I will continue to practice with the professional ethics, standards, and policies that influence professional practice.
>
> With your consideration, hopefully I'll be able to continue to be part of School's teaching staff and continue my endeavor in helping the students United States [sic] receive a quality education and life-long learning experience.

The petitioner commented that she is serving in "a hard-to-staff position," but assuming the petitioner's teaching skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. *NYSDOT*, 22 I&N Dec. at 221. Regarding the petitioner's "desire in becoming a permanent resident of the United States of America," the petitioner was already the beneficiary of an approved immigrant petition three years before the filing date of the present petition. Therefore, the issue in the present petition is whether she qualifies for a higher classification than the one already granted to her. Approval of a second petition would not guarantee approval of an adjustment application. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988).

In her statement, the petitioner did not mention the *NYSDOT* guidelines or explain how she meets them. The petitioner expressed general goals such as helping special needs students in the United States receive a "quality education," but the record does not show how the petitioner's work would impact the field beyond . With regard to the petitioner's special education teaching duties, there is no evidence establishing that the benefits of her work would extend beyond her students at School such that they might have a national impact. *NYSDOT*, 22 I&N Dec. at 217, n.3. provides examples of employment where the benefits would not be national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. In the present matter, the benefits of the petitioner's impact as a special educator would be limited to students at her school and, therefore, so attenuated at the national level as to be negligible. In addition, the record lacks specific examples of how the petitioner's work as a teacher has influenced the education field on a national level.

The petitioner submitted various letters of support discussing the petitioner's work as a special education teacher. As some of the letters contain redundant claims already addressed in other letters, not every letter will be quoted. Instead, only selected examples will be discussed to illustrate the nature of the references' claims.

, Principal, School, stated:

> [The petitioner] has been employed as a special educator at School since October 2005. During this time she continues to provide the multiply disabled students an appropriate educational program. [The petitioner] has excellent technology skills and she utilizes technology daily in her classroom and she has graciously assisted many other staff with technology issues. [The petitioner] has a keen understanding of the various disabilities and the impact the disabilities have on learning. . . . Her classroom is inviting, structured and instructional areas are clearly evident. She continually stresses the importance of communication from her students from verbal responses, eye contact, and the use of Picture Communication Symbols (PCS), Topic boards, Augmentative Communication Devices, and written words. . . . [The petitioner] is a very organized, thorough and perceptive educator. She relates well to students staff and parents. She is patient, warm, and caring and recognizes the need for daily structure and routine.
>
> [The petitioner] has volunteered for the third year to participate in the Framework for Teaching Pilot Teacher Evaluation Model. She has completed the requirements of the program and been able to identify areas of strength and areas of growth needed to support her teaching practice.
>
> [The petitioner] has demonstrated exemplary work in creating artifacts and portfolios for her students taking the Alternative Maryland State Assessment (ALT-MSA). During MDT/IEP [Multidisciplinary Team/Individualized Education Program] meetings with the families of her students, [the petitioner] consistently displays a positive attitude, professionalism and is organized and methodical in her approach. She communicates sensitive information in a very tactful and caring manner. She is an excellent listener to parental concerns and has offered workable suggestions to families regarding academics, communication, and health and behavior issues.

Ms. comments on the petitioner's teaching skills and activities at School, but Ms. does not indicate that the petitioner's work has had, or will continue to have, an impact beyond the students under her tutelage and the local school system that employed her. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa

classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

Occupational Therapist, School, stated:

> [The petitioner] has worked here at School for the past 7 years. . . . [The petitioner] has worked in classrooms with students with autism, orthopedic needs, vision needs, and behavioral concerns. . . . She is excellent at breaking down the material and presenting it at the level that each individual student is on in her classroom. Students with orthopedic and visual needs require further adaptations. For example she makes sure her students with orthopedic needs follow the plan laid out by the Physical Therapist and she puts them in their equipment so they can walk in the building. She even takes it a step farther and gives them the opportunity to walk when she takes her students out on CBI (Community Based Instruction) trips out in the community. She has worked with visually impaired students as well. She has modified their material so that everything she presents to them is tactile. On CBI trips they bring their canes and learn how to use them in the community. She is very patient with her students. She has made significant gains with students with strong behavioral issues, that many teachers prior to her have been unable to change. She has demonstrated professionalism in her teaching, her relationship with her colleagues, and during IEP (Individualized Educational Plan) meetings with parents. She has learned to be very proficient with writing and documenting for ALT MSA (Alternative Maryland State Assessment) which is very time consuming and point specific to each individual student. This is a very dependable teacher who is very well valued here at

Ms. discusses the petitioner's work as a special educator at School, but Ms. fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

Speech/Language Pathologist, School, stated:

> [The petitioner] is a special education teacher at School, a school for multiply-handicapped children in Maryland.
>
> * * *
>
> [The petitioner] is, by far, the most professional, talented, organized, creative, and caring special education teacher with whom I have ever worked. She tirelessly creates exciting learning activities for each and every one of her students. [The petitioner] is considered the technological leader for all staff members in our school. She constantly finds exciting computer programs or applications for her students – enticing them to learn! She collaborates well with all specialists and consistently follows through with the specialists' suggestions for the good of her students. Losing [the petitioner] as a special educator would be a huge loss for School!

Ms. comments favorably on the petitioner's teaching qualities and use of computer technologies at School, but does not indicate how the petitioner's impact or influence as a teacher is national in scope.

, Special Education Teacher, School, stated:

> [The petitioner] is currently assigned to the autism program of the school. In this role, she works directly with students and coordinates closely with the special services team comprising of counselors, speech/pathologist, physical therapist, occupational therapist, vision and mobility instructor, and psychologist. Together with the transdisciplinary team, [the petitioner] assesses students' needs and develops individual educational plans necessary for students to develop skills needed to be successful in the regular classroom.
>
> [The petitioner] is a qualified, professional teacher. She quickly gains the confidence of the parents and her colleagues. They view her as a valuable resource and solid educator. Of worthy mention is [the petitioner's] ability to accurately diagnose learning limitations inherent in her students and she is able to effectively prescribe the appropriate support to help these children. She relates well with her students, colleagues and parents.
>
> I have the opportunity to mentor [the petitioner] and found her to be an equable person with above average common sense, good humor and a comfortable amount of self-confidence. In summary, [the petitioner] is a committed and competent educator.

Ms. discusses the petitioner's special education duties and personal attributes, but Ms. comments do not set the petitioner apart from other competent and qualified teachers, or explain how the petitioner's work has impacted the field beyond her school.

Technology Coordinator, School, stated:

> [The petitioner] and I have worked together for 6 years now in this school. . . . I have made frequent visits to [the petitioner's] classroom on different times of the day. I see her utilize her technology equipment on a daily basis and on different subject areas.
>
> Her students are also capable in using these technologies because she gives them ample opportunities to explore and use the equipment to do some of their class work. She uses computer desktops, a laptop, and an Elmo projector and visualize with camera to focus on the different areas in the classroom she wants to highlight during her presentation of the lesson. She also utilizes lesson presentations on DVDs on TV, power point presentations and internet resources to enrich her lessons. She develops multi-sensory lesson plans to meet the needs of auditory, visual, tactile, and kinesthetic learners. She also sees to it that various forms of technology are incorporated in each lesson together with use of manipulative and learning centers. Her students are focused and find enjoyment and always look forward to utilizing these technologies because she encourages them to explore these resources.

Mr. comments on the petitioner's utilization of technology equipment in her classroom, but Mr. does not indicate how the petitioner's impact or influence as a teacher is national in scope.

School Counselor, School, stated:

> In her position of Special Education Classroom Teacher here at [the petitioner] is very professional and an asset to our school.
>
> Based on my experience working with [the petitioner], she has good communication skills, can work independently and is able to follow through to ensure that any assignment is completed in a timely manner.
>
> During the time that I have worked with [the petitioner], she has exhibited good classroom management, and has been able to successfully manage her Individual Education Program (IEP) caseload. [The petitioner] has shown that she has good communication with parents, and has wonderful rapport with her students. She has shown a great ability to motivate and teach our special needs students with enthusiasm and a wonderful use of technology.
>
> She has also been able to positively coordinate her classroom staff which includes classroom aids, assistants and paraprofessionals. She effectively schedules and manages the paraprofessionals to maintain efficient classroom operation.

Although Ms. describes the petitioner as having good communication skills, an independent worker, prompt in completing her assignments, exhibiting good classroom management, enthusiastic, an able motivator, and an effective coordinator of her classroom staff, Ms. comments do not set the petitioner apart from other competent and qualified teachers, or explain how the petitioner has impacted the field beyond her school. Regardless of the petitioner's particular experience or skills, even assuming they are unique, the benefit that her skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *NYSDOT*, 22 I&N Dec. at 221.

stated:

> [The petitioner] was my granddaughter special education teacher for six years…. [The petitioner] saw <u>all</u> of the potential in this child and never let go of her. She taught to read, to count, to be self-sufficient and to learn how to manage her emotions and behaviors through using her words. [The petitioner] spent time allowing to grow and encouraged her to do more even when did not want to. [The petitioner] was always thinking of creative ways to challenge to learn. She never gave up on her. Her ability to teach children with disabilities was outstanding.

Ms. speaks highly of the petitioner's interactions with her granddaughter and her comments demonstrate that the petitioner works in an area of substantial intrinsic merit. However, Ms. comments do not indicate that the petitioner's work has influenced the field as whole, or that the petitioner has or will benefit the United States to a greater extent than other qualified special education teachers.

stated:

> My daughter attended School for 11 years. For her last 5 years at , [the petitioner] was her educator and advocate. [The petitioner] showed companion [sic], understanding and dedication to the well-being of all her students. [The petitioner] possessed a quality to pull out the best in each student. For example activities and learning skills would not do for others; [the petitioner] was able to incorporate strategies that would aid her in wanting to participate. She always took the extra steps for safety of all her students which is very important in this day and time. [The petitioner] has proven to be very trustworthy person in caring for all the special needs students.
>
> There are only a few good educators that are able to set important goals for the growth of each student individual IEP and [the petitioner] was one of the few. She has always showed dedication to each student growth by doing the extra that was needed when no one else would. . . . She is a highly qualified special need educator, advocate and resource. She must be a part of the system for the growth of our special need children because of her companion [sic], dedication and skills.

Ms. praises the petitioner's skills as a special educator, but Ms. fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

stated:

> [The petitioner] was my daughter's teacher for 3 years (2008-2009, 2009-2010, and 2010-2011 school years). My daughter has multiple disabilities. [The petitioner] was an outstanding, supportive and patient teacher to my daughter.
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> * * *
>
> On a daily basis, we received reports on our daughter's day. [The petitioner] was always very responsive to my emails and notes.
>
> On a weekly basis, [the petitioner] accompanied my daughter and classmates to Community Based Instruction activities. [The petitioner] was instrumental in improving my daughter's behavior in public setting such as stores and restaurants.
>
> * * *

> In the classroom, [the petitioner] supported and nurtured my daughter's individualized education plan and goals. She was a regular and engaged participant in each meeting we had to discuss my daughter's Individualized Educational Plan goals and objectives.
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> * * *
>
> In a time when our population of individual disabilities in our country continues to increase and with a shortage of Special Education Teachers in the United States, we cannot afford to lose a passionate and dedicated teacher like [the petitioner].

Ms. [redacted] comments on the petitioner's work with her daughter, but Ms. [redacted] does not explain how the petitioner's work has influenced the field on a national level. In addition, while Ms. [redacted] points to "a shortage of Special Education Teachers in the United States," the classification sought was not designed merely to alleviate skill shortages in a given field. As previously discussed, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. *NYSDOT*, 22 I&N Dec. at 221. The preceding references praise the petitioner's teaching abilities and personal character, but do did not demonstrate that the petitioner's work has had an impact or influence outside of the school where she has worked. They did not address the *NYSDOT* guidelines which, as published precedent, are binding on all USCIS employees. *See* 8 C.F.R. § 103.3(c). That decision cited school teachers as an example of a profession in a field with overall national importance (education), but in which individual workers generally do not produce benefits that are national in scope. *Id.* at 217 n.3.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of the petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

The petitioner submitted the following:

1. Certificate of Achievement (2006) from County Executive, Maryland in honor of the petitioner's "service as an educator in the Public School System";
2. Certificate from the Maryland State Department of Education honoring the petitioner for being selected to receive a "2006 MINT Small Grants Award";
3. Certificate of Recognition (2006) from the Board of Education presented to the petitioner "for winning the Maryland State Department of Education New Teachers Award Grant";
4. A February 22, 2006 letter from Member of Congress, Fourth District, Maryland congratulating the petitioner for "being awarded the Maryland Initiative for New Teachers grant";
5. Certificate of Recognition (2010) from the for "outstanding service and dedication as a member of the PEN CORE TEAM" (2010);
6. Maryland Educator Certificate;
7. Colorado Professional Teacher license;
8. New Mexico Special Education license;
9. Physical Therapist registration certificate from the Board of Physical and Occupational Therapy, Philippines;
10. Physical Therapist license from the Professional Regulation Commission, Manila;
11. Physical Therapist Professional Identification Card from the Professional Regulation Commission, Manila
12. Maryland State Teachers Association membership card;
13. Certificate of Membership for the Pilipino Educators Network; and
14. Certificate of Appreciation from the Pilipino Educators Network "for having served as Chair of the Membership Committee . . . from October 1, 2010 to September 30, 2012."

Licenses, professional memberships, and institutional recognition are all elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(C), (E) and (F), respectively. As noted previously, exceptional ability in the sciences, the arts or business is not sufficient to warrant the national interest waiver. The plain language of section 203(b)(2)(A) of the Act indicates that aliens of exceptional ability are subject to the job offer requirement (including alien employment certification). Particularly significant awards may serve as evidence of the petitioner's impact and influence on her field, but the petitioner has failed to demonstrate that the awards she received for have more than local significance. For instance, the petitioner's MINT Small Grants Award for "Beginning Teachers" provided funding to purchase "Intelli Tactiles Pre-Braille Concepts" software for 54 visually impaired students at School. There is no documentary evidence showing that the petitioner's licenses, professional memberships, and awards are indicative of her influence on the field of special education at the national level.

The petitioner also submitted copies of her "satisfactory" teacher evaluations and classroom observations from School. The petitioner, however, did not submit

documentary evidence indicating that she has impacted the field to a substantially greater degree than other similary qualified special education teachers. Moreover, there is no evidence showing that the petitioner's specific work has had significant impact outside of the school where she has taught.

In addition, the petitioner submitted numerous certificates of participation, completion, and attendance for training courses, seminars, and conferences relating to her professional development. While taking courses and attending seminars and conferences are ways to increase one's professional knowledge and to improve as a teacher, there is nothing inherent in these activities to establish eligibility for the national interest waiver.

The director issued a request for evidence on September 20, 2012, instructing the petitioner to "submit evidence to establish that the beneficiary's past record justifies projections of future benefit to the nation."

In response, counsel cited the No Child Left Behind Act (NCLBA) and other government initiatives to reform and improve public education. Counsel asserted that section 203(b)(2)(B)(i) of the Act does not contain clear guidance on eligibility for the waiver, and claims that Congress subsequently filled that gap with the passage of the NCLBA. Counsel noted that Congress passed the NCLBA three years after the issuance of *NYSDOT* as a precedent decision, and claims that "[t]he obscurity in the law that *NYSDOT* sought to address has been clarified," because "Congress has spelled out the national interest with respect to public elementary and secondary school education" through such legislation. Counsel, however, identified no specific legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them.

Counsel did not support the assertion that the NCLBA modified or superseded *NYSDOT*; that legislation did not amend section 203(b)(2) of the Act. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. Because Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*, counsel has not shown that the NCLBA indirectly implies a similar legislative change.

Counsel asserted that the benefit arising from the petitioner's work is national in scope because of the "national priority goal of closing the achievement gap." The record, however, contains no evidence that the petitioner's efforts have significantly closed that gap. The national importance of "education" as a concept, or "educators" as a class, does not establish that the work of one teacher produces benefits that are national in scope. *See NYSDOT*, 22 I&N Dec. at 217, n.3. A local-scale contribution to an overall national effort does not meet the *NYSDOT* threshold. The aggregate national effect from thousands of teachers does not give national scope to the work of each individual teacher.

Counsel continued:

> The national priority goal of closing the achievement gaps between minority and nonminority students, and between disadvantaged and more advantaged children is especially relevant in the context of and . The 2012 MSA [Maryland State Assessment] Reading results show that out of the 24 Maryland school districts ranked near the bottom at the 'All Student' level for each MSA-covered grade level . . . .
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> * * *
>
> Additionally, it is noteworthy that the updated 2012 Maryland Report Card shows that did not meet its Reading proficiency AMO targets . . . .

Although the petitioner has worked for there is no documentary evidence showing that she ever worked at the Regardless, the petitioner has worked for since 2005, and thus had been there for a number of years before the administration of the 2012 MSA tests. Counsel did not explain how the 2012 MSA results for (which indicate low rankings relative to other Maryland school districts) establish that the petitioner has played an effective role in "closing the achievement gap."

Counsel stated that the petitioner "is an effective teacher in raising student achievement in STEM" (science, technology, engineering and mathematics), but he cited no evidence to support that claim. As previously discussed, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. In addition, while counsel asserted that the petitioner has "proven success in raising proficiency of her students," he did not point to specific STEM test results or other documentary evidence in the record to support the assertion. Regardless, there is no documentation demonstrating that the petitioner has had an impact or influence outside of School or

Counsel asserted that providing "legal immigrant status for 'Highly Qualified Special Education Teachers' like [the petitioner] . . . will not only help improve the Education in the country but more importantly serve as 'key to the nation's economic prosperity.'" Counsel did not explain how the actions of one teacher would contribute significantly to improving the national educational system or the U.S. economy. Congress could have created a blanket waiver for special education teachers, but did not do so. Instead, the job offer requirement applies to members of the professions (such as public school teachers) and to aliens of exceptional ability (*i.e.*, foreign national workers who show a degree of expertise significantly above that ordinarily encountered in a given field).

Counsel stated that the labor certification requirement is deficient because, for labor certification purposes, the U.S. Department of Labor considers a bachelor's degree, rather than a master's degree and experience, to be the minimum educational requirement for a special education teacher. The

petitioner submitted information from the *Occupational Outlook Handbook* describing what the U.S. Department of Labor considers to be the minimum qualifications necessary to become a special education teacher:

> Public school teachers are required to have a least a bachelor's degree and a state-issued certification or license.
>
> * * *
>
> Education
>
> All states require public special education teachers to have at least a bachelor's degree. Some of these teachers major in elementary education or a content area, such as math or chemistry, and minor in special education. Others get a degree specifically in special education.
>
> * * *
>
> Some states require special education teachers to earn a master's degree in special education after earning their teaching certification.
>
> * * *
>
> Licenses
>
> All states require teachers in public schools to be licensed. A license is frequently referred to as a certification.
>
> * * *
>
> Requirements for certification vary by state. However, all states require at least a bachelor's degree. They also require completing a teacher preparation program and supervised experience in teaching, which is typically gained through student teaching. Some states require a minimum grade point average.
>
> Many states offer general special education licenses that allow teachers to work with students across a variety of disability categories. Others license different specialties within special education.
>
> Teachers are often required to complete annual professional development classes to keep their license. Most states require teachers to pass a background check. Some states require teachers to complete a master's degree after receiving their certification.

> Some states allow special education teachers to transfer their licenses from another state. However, some states require even an experienced teacher to pass their own licensing requirements.
>
> All states offer an alternative route to certification for people who already have a bachelor's degree but lack the education courses required for certification. Some alternative certification programs allow candidates to begin teaching immediately, under the close supervision of an experienced teacher.

Counsel emphasized "the critical timeline" and "time-sensitive obligation" for hiring "Highly Qualified Teachers,'" and claimed that the labor certification process cannot accommodate this need because "[t]he United States Department of Labor minimum education requirement for Special Education Teacher is just a bachelor's degree."

Section 9101(23) of the NCLBA defines the term "Highly Qualified Teacher." Briefly, by the statutory definition, a "Highly Qualified" elementary school teacher:

- has obtained full State certification as a teacher or passed the State teacher licensing examination, and holds a license to teach in such State;
- holds at least a bachelor's degree; and
- has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum, or (in the case of experienced teachers not "new to the profession") demonstrates competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation.

Section 9101(23)(A)(ii) of the NCLBA further indicates that a teacher is not "Highly Qualified" if he or she has "had certification or licensure requirements waived on an emergency, temporary, or provisional basis."

The petitioner has not established that the "Highly Qualified" standard involves requirements that are significantly more stringent than those outlined in the *Occupational Outlook Handbook*, or that a public school could not obtain a labor certification for a "Highly Qualified Teacher." Indeed, the petitioner's own approved labor certification required her to hold a bachelor's degree in education or physical therapy, and to "have or be immediately eligible for Maryland Teaching Certificate," elements consistent with the "Highly Qualified" designation. Thus, the petitioner's level of education and experience are not required for "highly qualified" status under the NCLBA. Counsel, therefore, did not support the claim that the labor certification process frustrates the NCLBA's mandate for schools to employ "highly qualified teachers."

Counsel stated that a waiver would ultimately serve the interests of United States teachers, because if schools "fail to meet the high standard required under the No Child Left Behind (NCLB) Law," the result would be "not only . . . closure of these schools but [also] loss of work for those working in

those schools." Counsel does not document "closure of . . . schools" for failing to meet NCLBA requirements, and the record does not show that the petitioner's work has brought schools closer to meeting the NCLBA requirements.

Counsel further stated:

> [The petitioner] is firmly committed to teaching at PGCPS. However, is currently barred for a two-year period . . . from filing any employment-based immigrant and/or nonimmigrant petition pursuant to the terms of a settlement agreement it had entered into with the United States Department of Labor arising from willful violations of the H-1B regulations at 20 C.F.R. Part 655, subparts H and I.

The U.S. Department of Labor invoked the debarment provisions of section 212(n)(2)(C)(i) of the Act against owing to certain immigration violations by that employer. As a result, between March 16, 2012 and March 15, 2014, USCIS cannot approve any employment-based immigrant or nonimmigrant petitions filed by[1] This debarment means that is, temporarily, unable to file its own petition on the alien's behalf, and thus explains why labor certification is not an option in the short term. The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the alien will serve the national interest to a substantially greater degree than do others in the same field. *NYSDOT*, 22 I&N Dec. at 218 n.5. Any waiver must rest on the petitioner's individual qualifications, rather than on the circumstances that (temporarily) prevent from filing a petition on her behalf.

Counsel stated that another teacher received a national interest waiver, and asked that the present petition "be treated in the same light." Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). While AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished service center decisions are not similarly binding. *See* 8 C.F.R. § 103.3(c). Furthermore, counsel provided no evidence to establish that the facts of the instant petition are similar to those in the unpublished decision. Without such evidence, the assertion that both cases merit the same outcome is unwarranted. The only stated similarity is that the beneficiary of the approved petition is "also a teacher in School System."

The petitioner submitted public school progress reports for and MSA Reading results for Prince and public schools; President George H.W. Bush's "Remarks on Signing the Immigration Act of 1990"; information about Public Law 94-142; a copy the Supreme Court decision in *Brown v. Board of Education*, 347 U.S. 483 (1954); a copy of Section 1119 of the NCLBA; a statement by U.S. Secretary of Education

[1] The list of debarred and disqualified employers is available on the U.S. Department of Labor's website. *See* http://www.dol.gov/whd/immigration/H1BDebarment.htm, accessed on July 18, 2013, copy incorporated into the record of proceeding.

Arne Duncan on the National Assessment of Educational Progress Reading and Math 2011 Results; a September 26, 2011 article in *Education Week* entitled "Shortage of Special Education Teachers Includes Their Teachers"; an article entitled "STEM Sell: Are Math and Science Really More Important Than Other Subjects?"; "Barack Obama on Education" questions and answers posted at www.ontheissues.org; information about STEM fields printed from the online encyclopedia *Wikipedia*; an article entitled "Special Education Teacher Retention and Attrition: A Critical Analysis of the Literature"; abstract for a report entitled "SPeNSE: Study of Personnel Needs in Special Education"; an article in the *Wall Street Journal* entitled "The Importance of Science and Math Education"; and the written testimony of Microsoft's Bill Gates before the Committee on Science and Technology of the United States House of Representatives (March 12, 2008). As previously discussed, general arguments or information regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual alien benefits the national interest by virtue of engaging in the field. *NYSDOT*, 22 I&N Dec. at 217. Such assertions and information address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. None of the preceding documents demonstrate that the petitioner's specific work as a special educator has influenced the field as a whole.

The director denied the petition on January 5, 2013. The director found that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States. The director indicated that the petitioner had not shown that her work as a special education teacher would be national in scope. In addition, the director stated the petitioner had not demonstrated any contributions of such unusual significance that she merits the special benefit of a national interest waiver.

On appeal, counsel asserts that "USCIS erred in giving insufficient weight to the national educational interests enunciated in the No Child Left Behind Act of 2001 as the guiding principle rather than the precedent case" *NYSDOT*. Counsel, however, does not point to any specific legislative or regulatory provisions in the NCLBA that exempt foreign school teachers from *NYSDOT* or reduce its impact on them. It is within Congress's power to establish a blanket waiver for teachers, "highly qualified" or otherwise, but contrary to counsel's assertions, that waiver does not yet exist. With regard to following the guidelines set forth in *NYSDOT*, by law, the USCIS does not have the discretion to reject published precedent. *See* 8 C.F.R. § 103.3(c), which indicates that precedent decisions are binding on all USCIS officers.

Counsel further states:

> With respect to the E21 visa classification, INA § 203(b)(2)(A) provides in relevant part that: "Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the **national . . . educational interests**, . . . of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

Counsel, above, highlights the phrase "national . . . educational interests," but the very same quoted passage also includes the job offer requirement, *i.e.*, the requirement that the alien's "services . . . are sought by an employer in the United States." Counsel has, thus, directly quoted the statute that supports the director's conclusion. By the plain language of the statute that counsel quotes on appeal, an alien professional holding an advanced degree is presumptively subject to the job offer requirement, even if that alien "will substantially benefit prospectively the national . . . educational interests . . . of the United States." Neither the Immigration and Nationality Act nor the NCLBA, separately or in combination, create or imply any blanket waiver for foreign teachers.

Counsel states that the director's "decision did not present even one comparative candidate having at least the equivalent accomplishment as that of [the petitioner] to supports its determination." Counsel's assertion rests on the incorrect assumption that the *NYSDOT* guidelines amount to an item-by-item comparison of an alien's credentials with those of qualified United States workers. The key provision, however, is that the petitioner must establish a record of influence on the field as a whole. There is no provision in the statute, regulations, or *NYSDOT* requiring the director to specifically identify other equally qualified special educators. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

Counsel asserts that the director "erred in disregarding evidence demonstrating the national scope of the petitioner's proposed benefit through her effective role in serving the national educational interest of closing the achievement gap." The overall importance of closing the achievement gap between minority and nonminority students does not imply that any one teacher will play a nationally significant role by educating her students in subject areas where performance deficiencies exist. Again, general arguments regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. *NYSDOT*, 22 I&N Dec. at 217. Regardless, as previously discussed, there is no documentary evidence showing that the petitioner has played an effective role in "closing the achievement gap" in or nationally.

Counsel again points to the petitioner's MINT Small Grants Award for "Beginning Teachers" and other award certificates as evidence of her "past history of achievement." The petitioner's awards from and the Maryland State Department of Education and are local in nature or limited geographically to the state of Maryland, and do not show that the petitioner has had a wider impact on the field of special education. There is no documentary evidence demonstrating that any of the awards received by the petitioner are national in scope and indicative of her influence on the field as a whole. Counsel also points to the petitioner's "satisfactory" ratings and the written comments from her principal at School, but there is no documentary evidence showing that the petitioner's specific work has had significant impact outside of the schools where she taught or that her work has influenced the field to a substantially greater degree than that of other special educators.

Counsel contends that factors such as "the 'Privacy Act' protecting private individuals" make it "impossible" to compare the petitioner with other qualified workers. Once again, counsel's contention rests on the incorrect assumption that the *NYSDOT* guidelines amount to an item-by-item comparison of an alien's credentials with those of qualified United States workers. The pertinent eligibility factor set forth in *NYSDOT*, however, is that the petitioner must demonstrate a record of influence on the field as a whole. Such a requirement does not necessitate a review of other special education teachers' credentials.

Counsel claims that "the Immigration Service is requiring more from the beneficiary's credentials and tantamount to having exceptional ability," even though one need not qualify as an alien of exceptional ability in order to receive the waiver. As previously discussed, the threshold for exceptional ability is a separate determination from the threshold for the national interest waiver. It remains that the petitioner's evidence does not facially establish eligibility for the national interest waiver. The director did not require the petitioner to establish exceptional ability in her field. Instead, the director observed that the petitioner's evidence does not show that the petitioner's work has had an influence beyond the school where she has worked.

Counsel states that the labor certification guidelines "require only a bachelor's degree," and therefore "may not meet the objective of employers to hire highly qualified teachers pursuant to No Child Left Behind." On page 15 of the appellate brief, however, counsel acknowledges that the statutory definition of a "Highly Qualified Teacher" requires only a bachelor's degree. Counsel does not reconcile these contradictory claims.

Counsel cites to several studies pointing to a high turnover rate among special education teachers. As previously discussed, a shortage of qualified workers in a given field is an issue that falls under the jurisdiction of the Department of Labor through the alien employment certification process. *NYSDOT*, 22 I&N Dec. at 221. At best, this information shows that there is a demand for credentialed special education teachers, a demand that the labor certification process can – and, in this instance, did – address. Counsel, in effect, claims that the petitioner would have difficulty obtaining a benefit that she has, in fact, already secured.

Much of the appellate brief consists of general statements about educational reform and discussion of perceived flaws in the labor certification process. The petitioner, however, has not established that Congress intended the national interest waiver to serve as a blanket waiver for special education teachers. It is the position of USCIS to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization. *Id.* at 217.

It is evident from a plain reading of the statute that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. The petitioner has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *Id.* at

217 n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219 n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole."). On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.